

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD P. HOLMES,

Plaintiff-Appellant,

v

DONNA JEAN HOLMES,

Defendant-Appellee.

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UNPUBLISHED

October 11, 2005

No. 252528

Oakland Circuit Court

Family Division

LC No. 99-358976-DM

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs\*, JJ.

PER CURIAM.

Plaintiff Richard P. Holmes appeals by leave granted the trial court's order granting his motion to modify spousal support. Plaintiff contends that the reduction of his spousal support obligation from \$3,000 to \$2,000 a month was inequitable under the circumstances. He argues that the spousal support payments should be further reduced or completely eliminated. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant Donna Jean Holmes were divorced in 1990, following a lengthy marriage.<sup>1</sup> At that time, plaintiff earned \$173,000 annually and defendant was not employed outside of the home. The parties equitably divided the marital assets. Plaintiff was ordered to pay defendant \$3000 per month in spousal support plus 40% of all bonuses earned. Defendant was also awarded one half of plaintiff's pension upon his retirement. Following the divorce, defendant began working and earned \$58,000 in 2000, and \$49,000 in 2001. Plaintiff was permanently laid off in 2000, and, as he had reached retirement age, he began to collect his pension. Plaintiff's annual income from his half of the pension was approximately the same amount he owed in spousal support. However, plaintiff also had an IRA mutual fund account valued at approximately \$700,000. Plaintiff sought a reduction in his spousal support obligation due to the reduction in his income. The Friend of the Court reviewed the matter and

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<sup>1</sup> Based on the complaint, the parties were married for twenty-nine years. However, other portions of the record indicate that they were married for thirty-five years.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

recommended that spousal support should be discontinued. The trial court disagreed. Although there had been a change in circumstances, the court found that a slight reduction properly balanced the incomes and needs of the parties.

We review a trial court's findings of fact in modifying an award of spousal support for clear error.<sup>2</sup> In order to justify the modification, the moving party must establish the existence of new facts or changed circumstances following the entry of the judgment of divorce.<sup>3</sup> "The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party."<sup>4</sup> Accordingly, the award must be just and reasonable under the circumstances.<sup>5</sup> In determining whether an award of spousal support is just and reasonable, the trial court should consider the following factors:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity.<sup>[6]</sup>

Under certain circumstances, "[t]he voluntary reduction of income may be considered in determining the proper amount of alimony."<sup>7</sup>

In this case, the trial court properly concluded that plaintiff had shown changed circumstances justifying a review and adjustment of his spousal support obligation based on the change in the parties' incomes. The trial court also properly concluded that eliminating plaintiff's obligation was not warranted. The trial court found the continuation of support to be just and reasonable based on the length of the marriage, the parties' ability to remain gainfully employed, the age of the parties, plaintiff's continued ability to pay spousal support, the parties' present situation and principles of equity.

Defendant is now nearing the age of retirement and anticipates a reduced income in the near future. Plaintiff is retired and is currently living on a reduced income. Due to his age, it is unlikely that plaintiff will find gainful employment in the future. However, the trial court properly determined that plaintiff still has the ability to pay spousal support. Even though

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<sup>2</sup> *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

<sup>3</sup> *Ackerman v Ackerman*, 197 Mich App 300, 301; 495 NW2d 173 (1992).

<sup>4</sup> *Moore*, *supra* at 654.

<sup>5</sup> MCL 552.23(1).

<sup>6</sup> *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).

<sup>7</sup> *Moore*, *supra* at 655.

plaintiff's taxable income has been reduced, discovery revealed that plaintiff's monthly expenses significantly exceed his reported income.<sup>8</sup> Furthermore, the trial court properly found that plaintiff could increase his income by drawing funds from his IRA. Based on the evidence of plaintiff's continued ability to pay, regardless of his age and reported income, and due to defendant's impending retirement, the trial court properly failed to eliminate plaintiff's obligation under the judgment of divorce.

Affirmed.

/s/ Jessica R. Cooper

/s/ Karen M. Fort Hood

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<sup>8</sup> These excessive expenses include many luxury items, including \$5046 to the Michigan Ticket Department, \$1780 to the Fisher Theatre and Playgoers, \$2804 to the Detroit Lions, large monthly payments to American Express, and payments totaling over \$10,000 to other family members.